EFFECTIVENES OF CAPITAL PUNISHMENT IN COMBATING CRIME IN INDIA: A CRITICAL STUDY

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INTRODUCTION

The act of imposing the death sentence, commonly referred to as capital punishment, entails the formal declaration of a sentence that culminates in the cessation of the convicted individual's life. This represents an extreme instance of an irrational symbol of declaration or evaluation that can be bestowed. The severity of the punishment is often deemed excessive as it results in the termination of an individual's being and existence. The article under consideration pertains to an irreversible penalty that shall exclusively be imposed for the most egregious, egregious, and abhorrent criminal offenses perpetrated against individuals. The gravity of such transgressions and their frequency exhibit dissimilarities across different countries, and the consequences of imposing capital punishment have been subject to fluctuations over time. It is highly improbable that there exists any country across the globe that has not implemented capital punishment at some point in time. Throughout history, there has been a gradual progression of this phenomenon.

Clarence Patrick conducted a study on the implementation of capital punishment across 127 countries. His findings indicate that 107 nations have utilized this form of punishment for a total of 107 different offenses. The aforementioned resolution was attained as a result of the identification of 107 infractions. The underlying objective of punishment has traditionally been to monitor the wider populace with the aim of identifying individuals who have contravened the law or are accountable for criminal activities. The imposition of a penalty upon an individual not only functions as a safeguard for the wider community, but also tends to engender a sense of apprehension or caution among individuals who share similar traits. Penalty, As a result of this, the act of punishment cannot be perceived as an expression of anger or retribution towards an accountable or remorseful individual who has facilitated disreputable conduct. Instead, it must be regarded as a crucial measure for upholding public safety.

The utilization of capital punishment ought to be reserved for exceptional circumstances, such as instances involving an especially atrocious homicide or when the perpetrator has committed the most egregious offense against the government. Debates regarding the retention or elimination of capital punishment are currently taking place worldwide among various stakeholders including social advocates, legal reformists, judicial officials, legal

scholars, attorneys, and policymakers. Researchers and criminologists are currently engaged in a rigorous examination and inquiry into several longstanding and perplexing questions surrounding the death penalty. If capital punishment effectively achieves the objectives of penalization, ought it to be employed? The utilization of capital punishment as a proficient tool for retributive justice has been a prevalent convention for an extended period, until relatively recently. The notion that the act of taking another person's life can be deemed morally permissible has given rise to the argument that an individual who is accountable for the demise of another individual ought to be removed from the community, and that this situation entirely warrants the execution of the offender. Hence, the rationale behind implementing capital punishment may undoubtedly encompass retribution, which is a form of gratification that offers redress and restitution for an aggrieved person or community in the societal context. Legislation that channels and limits revenge can serve as a manifestation of societal resilience against criminal behavior. Furthermore, it is typically the primary remedy for the issue of vigilante justice perpetrated by individuals who perceive themselves as victims. Would the complete elimination of criminal offenders through the implementation of capital punishment effectively eliminate all occurrences of criminal activity within the vicinity of the general populace? Is it feasible to achieve a total cessation of criminal behavior among the general populace?

The response of human society, as it advanced through various phases of advancement, to unlawful behavior is depicted below. The variability of this response over time is regarded as a fundamental indicator of the significance of matters that impact the broader populace. The societal perspective towards criminals has been historically reprehensible, characterizing them as either savage beings who are relentlessly pursued or as hapless casualties of apathy. In contemporary society, hoodlums are widely regarded as a highly reprehensible and perilous category of individuals. Consequently, it is imperative that they face significant and expeditious sanctions to avert further harm to the populace and to forestall any additional harm to themselves.

NATURE OF PROBLEM

Currently, it is widely accepted that the degree of culpability is contingent upon the level of criminal capacity and the associated risk to society, in addition to the malevolence of the offender. The perpetrator bears the financial burden of the criminal act, encompassing the potential imposition of sanctions. When the magnitude of the cost (in terms of suffering) outweighs the perceived benefit of the crime, a considerable proportion of individuals will be

deterred from engaging in the criminal act.

Various academic institutions specializing in criminology and related sciences have determined that capital punishment is reserved for the most egregious offenses, which entail a significant level of culpability for posing a grave threat to society. The assessment of an offender's degree of culpability should not be solely based on the potential danger that their actions posed to society. Instead, it is imperative to also account for the offender's personal traits, the contextual factors surrounding the offense, and the gravity of the offense itself. The determination of whether the offender should be subjected to capital punishment can only be made subsequent to this.

Criminal activities are frequently perceived as plausible yet outrageous circumstances. The aforementioned instances involve an offender who possessed complete knowledge of the fatal consequences that would ensue as a result of their atrocious and grave conduct, and there were no extenuating factors present. In circumstances where the imposition of capital punishment is deemed necessary despite its contentious nature, the legal system ought to adopt an unequivocal stance and not shy away from imposing the severe sentence of death upon the offender. The aforementioned occurrences have resulted in the formulation of legal provisions in the criminal justice system of India, as well as in the criminal statutes of various other nations.

Historically, the utilization of capital punishment as a powerful tool for retributive justice has been a prevalent practice until relatively recently. The process of legitimization led to the legalization of the practice of sacrificing one's own life in return for the life of another individual. An individual who is suspected of committing multiple murders should be removed from society, and therefore justifies capital punishment. Consequently, the rationale underlying the imposition of capital punishment. Retribution, which pertains to the act of providing compensation and reparative satisfaction to an individual or societal group that has been wronged, may be a possible course of action. Retribution can be considered a form of societal discipline towards offenders, provided that it is regulated and constrained by legal frameworks. It is highly probable that it represents the optimal substitute for the arduous process of individual retaliation sought by those who have suffered harm.

As per a chronological perspective, it is apparent that the efficacy of capital punishment has declined as a component of societal protection, and similarly, its effectiveness has diminished as a mechanism of retributive justice. The observation that the annual count of individuals executed in developed nations, such as the United States, is notably lower than the overall

number of individuals who are unlawfully killed annually suggests that the application of capital punishment is not widely regarded with approval and is progressively declining in prevalence.

GLOBAL SCENARIO

The topic of capital punishment is widely debated worldwide. The United Nations General Assembly has recognized that in cases involving the imposition of the death penalty, there exists a need for the implementation of rigorous standards of due process to be followed by all nations. The protocols that are to be adhered to ought to be equitable, impartial, and reasonable. The United Nations Economic and Social Council has recommended that member nations abolish the use of capital punishment. It has further suggested that these nations take steps towards implementing this recommendation. According to Article 5 of the Universal Declaration of Human Rights (1948), individuals in custody must ensure that litigants receive a prompt and equitable trial. Additionally, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) (1966) stipulates that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. The United Nations has recommended the protection of the human rights of individuals facing the death penalty, which has been reaffirmed by the Economic and Social Council. The following summarization can be made:

• Countries that have not yet abolished capital punishment may only impose it for the most severe crimes.

• The death penalty can only be enforced in cases of serious offenses in accordance with the current established regulations.

• There should be no retrospective effect of the penalty.

Relevant Provisions under the Indian Penal Code and other Legislation Regarding Death Penalty in India

- ❖ Pursuing or attempting to take up weapons against the Government of India;
- ❖ Aiding in the pursuit of war; abetting a revolt in the military (presuming an insurrection occurs as a consequence); participating in a mutiny.
- ❖ Knowingly providing or fabricating evidence that leads to the conviction and execution of an innocent person for a capital crime;
- ❖ Murder;

- Murder by a lifer;
- Aiding the suicide of a minor, psychotic, or intoxicated person;
- Attempted murder by a lifer who causes bodily harm.
- Kidnapping, when the victim was detained for ransom or other coercive reasons
- When a group of five or more people commit banditry and one of them commits murder during the course of that wrongdoing, all members of the group are liable for the death penalty;
- Banditry with murder;
- Aiding or abetting a demonstration of Sati;
- Drug dealing in cases of rehash offenses.

OBJECTIVES OF PRESENT RESEARCH

The objective of this analysis is to scrutinize the diverse manifestations of capital punishment and their impacts on human culture and national governance. The present study aims to achieve a set of primary goals that encompass a wide range of areas.

- The objective of scrutinizing multiple legal cases is to comprehend the diverse factors that the criminal justice system considers while determining the appropriate penalties for offenders.
- To ascertain the perspectives of the judiciary regarding the verdicts rendered by criminal tribunals.
- The aim of this study is to shed light on the viewpoints of both offenders and victims of criminal activity in relation to the process of sentencing.
- To provide pertinent policies and initiatives pertaining to the administration of punishment.

One may choose to discuss the historical antecedents that precipitated the inception of capital punishment or alternatively, trace the evolution and implementation of the death penalty within the legal apparatus of law enforcement agencies in India.

- The aim of this study is to examine the importance of exoneration power and capital punishment within the socio-legal frameworks present within the country.
- The aim of this study is to examine the purpose and efficacy of punitive measures, particularly the death penalty, and to explore the various contexts and extents to which it

is employed.

- To undertake a research endeavor aimed at ascertaining whether the imposition of capital punishment contravenes the principles of human dignity.
- The aim of this study is to investigate the potential psychological effects of the death penalty on both the general public and individuals who have been sentenced to death. The objective is to provide evidence that may influence the court's decision-making process regarding the use of the death penalty.
- To conduct a study on the permissibility of capital punishment in accordance with Indian legal statutes.

REVIEW OF RELATED LITERATURE

Chambliss and Seidman (1971) assert that despite the legal principle of equal treatment for all individuals, certain groups are disproportionately subjected to arrest, prosecution, conviction, and harsher sentencing. Notwithstanding the legal provision of equal protection for all individuals, there exists a discrepancy between the legal framework and its implementation in practice.

Numerous scholarly investigations have centered on the criminal justice system, and they uniformly concur that the equitable and unbiased dispensation of justice is imperative. The hypothesis that specific and observable characteristics of the defendant, victim, sentencing judge or court, and the offense increase the probability of an arrest, charge, conviction, and/or severe sentence has been tested in various studies **(Burke and Turks, 1975; Gibson, 1978; Kleck, 2003).** Should this scenario hold true, it would undermine the fundamental pillars of our legal framework, encompassing the principle of equitable safeguarding of all individuals under the law, the preeminence of the rule of law, and the legitimacy of the criminal justice system.

Despite the existence of numerous studies on sentencing policies in Western countries, the extent of research on this topic in India remains relatively limited. The issue of inconsistent sentencing was initially highlighted in the legal case of ***Rameshwar Dayal v. State of Uttar Pradesh*** in 1971. In this case, the then-**Chief Justice Hidayatullah** made an observation that demonstrated the challenge of determining appropriate sentences for criminal offenses, which has yet to be resolved in a satisfactory manner. During his tenure, the experienced British judge, Sir Henry Hawkins, observed significant disparities in the criminal penalties within the British legal system while operating in a distinct context. The speaker provided further explanation,

highlighting the challenge that emerged due to the significant divergence in perspectives among the judges presiding over the criminal court.

Numerous research endeavors have been conducted to investigate the functioning of the sentencing process. According to **Brown's (1998)** perspective, a sentence fulfills several objectives, including retribution for the offender, deterrence from future criminal acts, discouragement of others from engaging in criminal behavior, protection of the public from the presence of criminals, and rehabilitation of the offender.

Research conducted by **Bullock (1961), Wolfgang and Reidel (1975), and Pope (1975)** has demonstrated the existence of extra-legal bias in court decisions, which is influenced by factors such as socioeconomic class and race.

Nevertheless, Hagan (1974) had already investigated a goal that was aligned with prior scholarly inquiry. Nonetheless, the researcher did not discover any indications indicating the prevalence of direct extralegal biases in the context of criminal sentencing. This is contradictory to the findings of prior studies. The objective of the study was to examine the outcomes of previous research endeavors that had investigated the impact of factors such as socioeconomic status on the determination of sentences, and to evaluate and re-examine their findings. The main focus of his research was the socioeconomic status of individuals who engage in criminal activities.

Talgam and Schild (2002) posit that during the sentencing stage, a judge's subjective evaluation of three primary factors, namely the gravity of the actual offense (as opposed to its legal definition), the offender's criminal history and culpability, and the judge's objective in the sentence, are the pivotal considerations. These factors can be categorized into three overarching objectives, namely incarceration, rehabilitation, and retribution. The authors asserted that there exists a significant disparity in the sentencing judgments of judges when it comes to first-time offenders and recidivists who exhibit incorrigible behavior, despite the fact that the offenses in question are categorized as being comparable. This holds true even in cases where the transgressions are categorized as interchangeable expressions. Rather than relying on precedents that may involve incomparable circumstances, the court will utilize the average sentence for analogous offenses. The aforementioned penalties can be categorized as retributive, deterrent, incarceration, or rehabilitative, contingent upon the offender's criminal record, whether they are

a first-time offender or have a lengthy history of criminal activity, or if they fall somewhere in between.

Among other results, a research by **Myers (1980)** on the models of behavior of law produced some discoveries on punishment. The paper was published in 1980. Her account suggests that the use of a potentially lethal weapon was a crucial factor in the court's decision to sentence the defendant to a jail sentence. According to **Pease (1988),** property offenses that included real or possible personal injury were seen as more severe by the Magistrates and other groups than those that did not involve harm. This was the case regardless of whether the harm was actual or potential.

Angira Singhvi (2006) provides a comprehensive breakdown of the legal structure governing corporate criminal responsibility and punishment.

In his article from **2010, Derick R. Vollrath** investigates whether or not the sentencing system that regulates white-collar criminal cases needs modification. The United States Sentencing Guidelines prescribe sentences that are, in general, excessively long and put a vastly disproportionate focus on the idea of "loss," which is the monetary amount of the damage that a court judges a white-collar criminal to have inflicted. In addition, the Guidelines recommend sentences that are typically too high. This idea of losing something is ill-defined, and it often involves making things up to the point where they become arbitrary.

In the case of ***Kimbrough v. United States***, the Supreme Court ruled that a sentencing judge is allowed to depart from a recommendation of the Sentencing Guidelines solely on the basis of a disagreement with the guideline's underlying principle. This ruling applies only in limited situations. This note contends that sentencing judges should adopt an aggressive reading of the Supreme Court's ruling in the Kimbrough case and employ their newly recovered discretion to deemphasize the loss calculation and restore reason to the sentence of white-collar offenders. The note begins by stating that sentencing judges should adopt an aggressive interpretation of the Supreme Court's opinion in the Kimbrough case. Early instances suggest that appellate courts are sustaining the judgments of sentencing judges who, on the basis of policy considerations, utilize Kimbrough in order to diverge from the white-collar crime Guidelines.

Adelson is a great illustration of this occurrence, and it can be found in ***United States v. Adelson.*** In spite of the fact that **Adelson** was found to be responsible for a loss that ranged between $50 million and $100 million, **Judge Rakoff** did not follow the Guidelines' suggestion

that **Adelson** be sentenced to life in prison when he handed down his sentence. Despite the fact that Judge **Rakoff's** judgment was based at least in part on **Adelson's** particular circumstances, his ruling featured harsh language that derided the severity of the Guidelines and their focus on issues such as the loss calculation. To be more specific, **Rakoff** made the observation that the Guidelines' recommendation in **Adelson's** case revealed "the utter travesty of justice that sometimes results from the guidelines' fetish with abstract arithmetic, as well as the harm that guideline calculations can visit on human beings if they are not cabined by common sense."

According to **Bradfield (2002),** there has been a significant amount of research conducted on the sentencing discretion of female criminals in general; nevertheless, there has been very little scholarly emphasis given on the sentencing of women who murder their male partners. Her research focuses on the application of sentencing theory and procedure to the situation of abused women who have committed murder. This research looks at incidents that were identified in the Supreme Court of New South Wales between the years 1985 and 2000, when women were punished for murder or man slaughter in regard to the death of their male companion. According to the findings of the study, the present method used to determine the appropriate punishment for abused women who have committed murder is based on concepts of leniency and compassion.
When considered as a whole, the vast majority of previous advanced research on sentencing and the gender of convicts led to the conclusion that women are given milder punishment. However, since the aforementioned studies often contradict one another, the researcher conducting the current study took into consideration included this variable in the analysis.

HYPOTHESIS

The ongoing exploration pertaining to this work centers on the examination of the current arrangements surrounding the exercise of authority and implementation of capital punishment. Furthermore, the present discourse delves into the inquiry of the adequacy of these arrangements and the potential necessity of modifying or enlarging them. Furthermore, the study examined the validity and utility of the concepts presented by different entities within the Indian context. Given the current circumstances, it is imperative to examine the peculiarities encompassed by the current regulation. The justification for the expert's selection of this point for their research endeavor is based on its inherent relevance and significance.

The present research endeavor holds significant value in comprehending the role of capital punishment in the current socio-legal context and its implementation within the contemporary Criminal Justice Administration System in India. The exploration efforts have numerous benefits for various sectors of society, including but not limited to academia, scientific

communities, media professionals, social activists, and others. The current investigation is a modest undertaking aimed at ascertaining the function of capital punishment in the administration of justice for offenders. The issue of capital punishment cannot be viewed in a vacuum. The issue frequently emerges in relation to the management of equity.

RESEARCH METHODOLOGY

The effective completion of the exploratory task is dependent on the doctrinal methodology employed. The recent ideological transition towards an analyst's viewpoint has prompted endeavors to scrutinize the implementation and efficacy of capital punishment. The viability of the review is dependent upon the degree of administrative and regulatory oversight governing the implementation of capital punishment in India. The present research endeavor encompassed an examination of the hypothetical scenario pertaining to the exercise of authoritative and legal control over the power of acquittal and the imposition of the death penalty in India. The following components were incorporated in this study.

TENTATIVE SCHEME OF CHAPTERISATION

The Chapterization is proposed as follows:

1. Introduction and Evolution of Capital Punishment
2. Capital Punishment and Indian Legal System
3. Executing Procedures of Capital Penalties in India:
4. Pardoning Power: President & Governor
5. Judiciary and Legislation regarding Capital Punishment
6. Conclusion and Suggestions

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